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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,168

02/17/2004

Lindell B. Jones

7494

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7590

06/12/2006

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EXAMINER

STASHICK, ANTHONY D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/780,168	Applicant(s) JONES ET AL.	
	Examiner Anthony Stashick	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-36 is/are pending in the application.
- 4a) Of the above claim(s) 25-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04222004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 25-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 4, 2006. The traversal was considered but was deemed not to be convincing since the arguments do not address the differences pointed out in the restriction requirement. Therefore, the election/restriction is hereby made **Final**.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the vamp configured to only cover the big toe of the wearer, the tongue portion removably attachable to the vamp by hook and loop material, the tongue conforming to the foot of the wearer to keep the sandal upon the foot of the wearer without shoelaces or means to maintain the shoe snugly upon the foot of the wearer, the roller or in-line skate must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 recites the limitation “the sandal” in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 14-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Benjamin 2,049,347. Benjamin '347 discloses all the limitations of the claims including the following: a shoe (see Figures 7-8 and 10) with a sole 36, a vamp (upper) and a tongue portion (43 in Figure 7, 23, 24 in Figure 1); the tongue portion is attached to the sandal by a linking means (that shown in Figure 4) that allows the tongue portion to be rotated with respect to the vamp to display alternating sides of the tongue portion; the shoe is a sandal (see Figures); the tongue portion can be rotated with respect to the vamp without removal of the tongue portion from the vamp portion (see Figure 5, portions can be rotated); sandal is an

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open-toed sandal (see Figure 7); the vamp is configured to only cover the big toe (see Figure 7); the tongue portion is further removably attachable to the vamp (see Figure 5); the tongue comprise a first tongue portion 23 and a second tongue portion 24; each tongue portion is attached to the vamp with a retaining means (see Figure 2); each tongue portion may be individually rotated with respect to the vamp to alternately displaying opposing sides of each tongue (see Figure 2 in conjunction with Figure 5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin 2,049,347 as applied to claim 15 above in view of Bordin et al. 6,321,466. Benjamin 2,049,347 as applied to claim 15 above discloses all the limitations of the claim except the tongue portion being removably attachable to the vamp with hook and loop material. Bordin et al. '466 teaches that a tongue to a piece of footwear can be attached to the vamp of the footwear by hook and loop means (5 and 6) to allow for quick and easy removal and replacement of the tongue. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to fasten the tongue of Benjamin 2,049,347 to the vamp by hook and loop fastening means, as taught by Bordin et al. '466, to allow for quick and easy removal and replacement of the tongue, especially for those whose manual dexterity has decreased over time.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin 2,049,347 as applied to claim 15 above in view of McAtee 6,397,497. Benjamin 2,049,347 as applied to claims 15 above discloses all the limitations of the claim except for the tongue being made of stretchable material. McAtee '497 teaches that it is desirable to have a tongue made of stretchable material to allow it to

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expand and contract with the user's foot during use. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the tongue portion of Benjamin 2,049,347, as applied to claim 15 above, out of stretchable material to allow it to expand and contract with the user's foot during use of the sandal.

10. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin 2,049,347 as applied to claims 14 and 15 above in view of Wendt Des. 302,838. Benjamin 2,049,347 discloses all the limitations of the claims except for the shoe comprising a roller skate or in-line skate. Wendt '838 shows a roller skate used with a sandal-type upper. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to attach wheels, either in the "roller skate" configuration or the "in-line" configuration, to the bottom of the shoe of Benjamin 2,049,347, to allow the user to use the sandals to skate over surfaces.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are cited on form 892 enclosed herewith.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A),

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MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday through Thursday from 8:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS